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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/822,475	03/29/2001	Paul Douglas Byrd		8612
7590	06/01/2005		EXAMINER	
Paul Douglas Byrd 17 Leisure Valley Drive Conway, AR 72032			SIMITOSKI, MICHAEL J	
			ART UNIT	PAPER NUMBER
			2134	

DATE MAILED: 06/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Notice of Abandonment

Application No.

09/822,475

Applicant(s)

BYRD, PAUL DOUGLAS

Examiner

Michael J. Simitoski

Art Unit

2134

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. Applicant's failure to timely file a proper reply to the Office letter mailed on 08 September 2004.
 - (a) A reply was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.
 - (b) A proposed reply was received on 12 December 2004, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
 - (c) A reply was received on _____ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
 - (d) No reply has been received.
2. Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
 - (a) The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
 - (b) The submitted fee of \$_____ is insufficient. A balance of \$_____ is due.
The issue fee required by 37 CFR 1.18 is \$_____. The publication fee, if required by 37 CFR 1.18(d), is \$_____.
 - (c) The issue fee and publication fee, if applicable, has not been received.
3. Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
 - (a) Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
 - (b) No corrected drawings have been received.
4. The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. The decision by the Board of Patent Appeals and Interference rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. The reason(s) below:

See attached.

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

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DETAILED ACTION

1. The responses of 12/12/2004 and 4/25/2005 were received and considered.
2. Claims 1-3 are pending.

Revival of an abandoned application

3. The response of 12/12/2004 appears to be a request to withhold abandonment is not considered a valid response. Not having received a proper response within the six month time period since the final Office Action, the case must be abandoned. However, it appears that the reasoning presented in the response would, if appropriately documented, allow applicant to request the revival of the case through a petition to revive the application.

The following is taken from 37 CFR 1.137. Revival of abandoned application, terminated reexamination proceeding, or lapsed patent.

(a) Unavoidable. If the delay in reply by applicant or patent owner was unavoidable, a petition may be filed pursuant to this paragraph to revive an abandoned application, a reexamination proceeding terminated under §§ 1.550(d) or 1.957(b) or (c), or a lapsed patent. A grantable petition pursuant to this paragraph must be accompanied by:

(1) The reply required to the outstanding Office action or notice, unless previously filed;

(2) The petition fee as set forth in § 1.17(l);
**>

(3) A showing to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable; and<

(4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

The following is taken from § 1.17 Patent application and reexamination processing fees.

(l) For filing a petition for the revival of an unavoidably abandoned application under 35 U.S.C. 111, 133, 364, or 371 for the unavoidably delayed payment of the issue fee under 35 U.S.C. 151 or for the revival of an unavoidably terminated reexamination proceeding under 35 U.S.C. 133 (§ 1.137(a)):

By a small entity (§ 1.27(a))..... \$55.00

By other than a small entity..... \$110.00

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4. The response of 12/12/2005 states that applicant's filing of a proper response was unavoidably detained, but has not listed a specific date range during which applicant's filing was unavoidably detained. Information regarding petition practice at the PTO is discussed at <<http://www.uspto.gov/web/offices/pac/dapp/opla/petprac.htm#petrelaban>>. The PTO/SB/61 form is used to petition to revive an application unavoidably abandoned; a copy is included with this action and is available at <<http://www.uspto.gov/web/forms/sb0061.pdf>>. If applicant files a proper petition containing specific reasons and dates (showing that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unavoidable), with the required fee as set forth above, the application may be revived. Amendments filed after a final rejection, do not constitute a proper reply if the examiner refuses to have the amendment entered due to non-compliance with 37 CFR 1.116. Unless an amendment filed after a final rejection clearly places the application in condition for allowance, it is recommended that the reply filed be a Notice of Appeal or a continuation. In order to avoid delays in the consideration of a petition under 37 CFR 1.137(a) or (b) in instances in which such petition was not filed within one year of the date of abandonment, applicant should include the date that the applicant first became aware of the abandonment of the application and a showing as to how the delay in discovering the abandonment status occurred despite the exercise of due care or diligence on the part of the applicant.

Form of response to this abandonment

5. Referring to the previous paragraph, amendments filed after final do not constitute a proper reply if not entered. Amendments are entered if the amendments comply with 37 CFR 1.116, that is to say that the amendments have to put the application in condition for allowance,

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cancel rejected claims leaving only allowed claims, put the application in better condition for appeal or make specific amendments explicitly suggested by the Examiner in a previous Office Action. In the case of the instant application, the claims submitted in the response of 4/25/2005 are not believed to put the application in condition for allowance. In this regard, a proper response filed with a petition to revive would be a continuation. The amendments to the claims appear to contain subject matter not disclosed in the originally filed application (called new matter) and therefore would require the removal of new matter, cancellation of the claims containing new matter or amendments to the specification. The specification of an application must disclose all claimed subject matter. For example, claim 3 discloses a method of rotating the EMBOL symbol 180 degrees (apparently in the z-plane) and creating a bar code. This method was not disclosed in the original specification and would therefore be considered “new matter”. As a result, this claim would either need to be amended to remove the new matter, cancelled, or the specification (in a continuation) would need to be amended to include the claimed subject matter. Note that the specification cannot be amended with new matter during prosecution; only corrections to the form and wording of the specification may be amended. In the case of the instant application, the proper continuation would be a continuation-in-part, wherein the amended part of the specification and claimed subject matter would have an effective date of the filing of the continuation in part application. If applicant believes that the subject matter in the claims submitted 4/25/2005 was disclosed in the original application, the petition should include a response explaining where the subject matter can be found to avoid delays in prosecution.

Further prosecution

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6. It is noted that even if applicant files a continuation in part including amendments to the claims and specification, as part of a proper response with the petition to revive, there is still an outstanding issue where it appears applicant has disclosed a substantial portion of the invention in his three books, all more than one year prior to the date of filing of the instant application. Applicant is reminded that any claimed subject matter that has been disclosed in these books is not subject on which a patent can be granted.

Brief comment on the submitted claims

7. Applicant is reminded that all claims must be a single sentence. For instance, method claims often appear in the following form:

“I claim: A method of producing _____ comprising the steps of:

Performing _____;
Performing _____; and
Performing _____.”

A claim should not begin with “I claim all rights” as stated in the previous Office Action, but may begin with the type of claim, such as a method, apparatus, system, etc. Further, a claim must contain statutory subject matter such as stated in 35 U.S.C. §101 Inventions patentable.

“Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.” To qualify for one of these statutory classes of invention, methods should be “tangibly embodied” which is to say that the claimed subject matter must not recite non-functional data structures or the manipulation of abstract concepts and should produce some tangible result. For example, claim 1 recites “computer” and

claim 3 mentions pixel and font which requires that the claim be performed on some device and hence is tangible, however claim 2 could be computed without hardware and is therefore intangible. Further, the claims should recite, for instance, “a method of encrypting a message” so as to clarify that a tangible result is produced. Another more fundamental example is that “I claim adding a first number to a second number and subtracting a third number” is not statutory (because it is a manipulation of ideas and obtains no result), however, “I claim a mathematical operation performed by a computer, wherein the computer adds a first number to a second number to obtain a first result and subjects a third number from the first result to obtain a final result” would be statutory. Applicant is further reminded that claims should not contain “examples”. Examples should be given in the specification where the example is one instance of the steps performed on the claims. For instance, in the above addition and subtraction example, the specification might include an instance of the first, second, third numbers and the first and final results, but the claim would not contain the example as the submitted claims do. Applicant is further reminded that the claims in an application must be directed to one invention. While claims 1, 2 and 3 use the EMBOL symbol, claim 1 is directed creating symbols from the part of the EMBOL, claim 2 is directed to encrypting a word, and claim 3 is directed to creating a bar code, which as best understood are three distinct inventions. For more detailed information on claims, applicant is directed to MPEP §600 and §2100 and §800 for information multiple inventions in a single application.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J. Simitoski whose telephone number is (571) 272-3841. The examiner can normally be reached on Monday - Thursday, 6:45 a.m. - 4:15 p.m.. The examiner can also be reached on alternate Fridays from 6:45 a.m. – 3:15 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Morse can be reached at (571) 272-3838.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks
Washington, DC 20231

Or faxed to:

(703)746-7239 (for formal communications intended for entry)

Or:

(571)273-3841 (Examiner's fax, for informal or draft communications, please label "PROPOSED" or "DRAFT")

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-2100.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


MJS
May 26, 2005



GREGORY MORSE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNAVOIDABLY UNDER 37 CFR 1.137(a)		Docket Number (Optional)
First Named Inventor: Application Number: Filed: Title:	Art Unit: Examiner:	
<p>Attention: Office of Petitions Mail Stop Petition Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450</p> <p>NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (703) 305-9282.</p> <p>The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the Office notice or action plus any extensions of time actually obtained.</p> <p>APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION.</p> <p>NOTE: A grantable petition requires the following items:</p> <ul style="list-style-type: none"> (1) Petition fee. (2) Reply and/or issue fee. (3) Terminal disclaimer with disclaimer fee-required for all utility and plant applications filed before June 8, 1995, and for all design applications; and (4) Adequate showing of the cause of unavoidable delay. <p>1. Petition fee</p> <p><input type="checkbox"/> Small entity – fee \$ _____ (37 CFR 1.17(l)). Applicant claims small entity status. See 37 CFR 1.27.</p> <p><input type="checkbox"/> Other than small entity – fee \$ _____ (37 CFR 1.17(l)).</p> <p>2. Reply and/or fee</p> <p>A The reply and/or fee to the above-noted Office action in the form of _____ (identify the type of reply):</p> <p><input type="checkbox"/> has been filed previously on _____.</p> <p><input type="checkbox"/> is enclosed herewith.</p> <p>B The issue fee of \$ _____</p> <p><input type="checkbox"/> has been filed previously on _____.</p> <p><input type="checkbox"/> is enclosed herewith.</p>		

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This collection of information is required by 37 CFR 1.137(a). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 8 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED
UNAVOIDABLY UNDER 37 CFR 1.137(a)**

3. Terminal disclaimer with disclaimer fee

- Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
- A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ _____ for a small entity or \$ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. An adequate showing of the cause of the delay, and that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition under 37 CFR 1.137(a) was unavoidable, is enclosed.

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

Signature
Date

Typed or printed name
Registration Number, if applicable

Address
Telephone Number

Address

Enclosure Fee Payment

- Reply
- Terminal Disclaimer Form
- Additional sheets containing statements establishing unavoidable delay
- _____

CERTIFICATE OF MAILING OR TRANSMISSION (37 CFR 1.8(a))

I hereby certify that this correspondence is being:

- deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to **Mail Stop Petition**, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.
- transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (703) 872-9306.

Date
Signature

Typed or printed name of person signing certificate

**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED
UNAVOIDABLY UNDER 37 CFR 1.137(a)**

NOTE: The following showing of the cause of unavoidable delay must be signed by all applicants or by any other party who is presenting statements concerning the cause of delay.

Signature

Date

Typed or printed name

Registration Number, if applicable

(In the space provided below, please explain in detail the reasons for the delay in filing a proper reply.)

(Please attach additional sheets if additional space is needed.)